

DISPOSITION OF REAL PROPERTY

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne L. Niederhauser

House Sponsor: Gregory H. Hughes

LONG TITLE

General Description:

This bill addresses the disposition of property by a county or municipality.

Highlighted Provisions:

This bill:

- ▶ requires the disposition of property by a county or municipality to be in the public interest;
- ▶ addresses a county's or municipality's disposal of property acquired by exaction; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

10-8-2, as last amended by Chapters 136 and 254, Laws of Utah 2005

10-9a-508, as enacted by Chapter 254, Laws of Utah 2005

17-27a-507, as enacted by Chapter 254, Laws of Utah 2005

17-50-312, as last amended by Chapter 124, Laws of Utah 2003

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **10-8-2** is amended to read:

10-8-2. Appropriations -- Acquisition and disposal of property -- Municipal

authority -- Corporate purpose -- Procedure -- Notice of intent to acquire real property.

(1) (a) A municipal legislative body may:

(i) appropriate money for corporate purposes only;

(ii) provide for payment of debts and expenses of the corporation;

(iii) subject to Subsections (4) and (5), purchase, receive, hold, sell, lease, convey, and dispose of real and personal property for the benefit of the municipality, whether the property is within or without the municipality's corporate boundaries, if the action is in the public interest and complies with other law;

(iv) improve, protect, and do any other thing in relation to this property that an individual could do; and

(v) subject to Subsection (2) and after first holding a public hearing, authorize municipal services or other nonmonetary assistance to be provided to or waive fees required to be paid by a nonprofit entity, whether or not the municipality receives consideration in return.

(b) A municipality may:

(i) furnish all necessary local public services within the municipality;

(ii) purchase, hire, construct, own, maintain and operate, or lease public utilities located and operating within and operated by the municipality; and

(iii) subject to Subsection (1)(c), acquire by eminent domain, or otherwise, property located inside or outside the corporate limits of the municipality and necessary for any of the purposes stated in Subsections (1)(b)(i) and (ii), subject to restrictions imposed by Title 78, Chapter 34, Eminent Domain, and general law for the protection of other communities.

(c) Each municipality that intends to acquire property by eminent domain under Subsection (1)(b) shall, upon the first contact with the owner of the property sought to be acquired, deliver to the owner a copy of a booklet or other materials provided by the ~~[property rights ombudsman]~~ Office of the Property Rights Ombudsman, created under Section ~~[63-34-13]~~ 13-43-201, dealing with the property owner's rights in an eminent domain proceeding.

(d) Subsection (1)(b) may not be construed to diminish any other authority a

58 municipality may claim to have under the law to acquire by eminent domain property located
59 inside or outside the municipality.

60 (2) (a) Services or assistance provided pursuant to Subsection (1)(a)(v) is not subject to
61 the provisions of Subsection (3).

62 (b) The total amount of services or other nonmonetary assistance provided or fees
63 waived under Subsection (1)(a)(v) in any given fiscal year may not exceed 1% of the
64 municipality's budget for that fiscal year.

65 (3) It is considered a corporate purpose to appropriate money for any purpose that, in
66 the judgment of the municipal legislative body, provides for the safety, health, prosperity, moral
67 well-being, peace, order, comfort, or convenience of the inhabitants of the municipality subject
68 to the following:

69 (a) The net value received for any money appropriated shall be measured on a
70 project-by-project basis over the life of the project.

71 (b) The criteria for a determination under this Subsection (3) shall be established by the
72 municipality's legislative body. A determination of value received, made by the municipality's
73 legislative body, shall be presumed valid unless it can be shown that the determination was
74 arbitrary, capricious, or illegal.

75 (c) The municipality may consider intangible benefits received by the municipality in
76 determining net value received.

77 (d) Prior to the municipal legislative body making any decision to appropriate any funds
78 for a corporate purpose under this section, a public hearing shall be held. Notice of the hearing
79 shall be published in a newspaper of general circulation at least 14 days prior to the date of the
80 hearing, or, if there is no newspaper of general circulation, by posting notice in at least three
81 conspicuous places within the municipality for the same time period.

82 (e) A study shall be performed before notice of the public hearing is given and shall be
83 made available at the municipality for review by interested parties at least 14 days immediately
84 prior to the public hearing, setting forth an analysis and demonstrating the purpose for the
85 appropriation. In making the study, the following factors shall be considered:

(i) what identified benefit the municipality will receive in return for any money or resources appropriated;

(ii) the municipality's purpose for the appropriation, including an analysis of the way the appropriation will be used to enhance the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of the inhabitants of the municipality; and

(iii) whether the appropriation is necessary and appropriate to accomplish the reasonable goals and objectives of the municipality in the area of economic development, job creation, affordable housing, blight elimination, job preservation, the preservation of historic structures and property, and any other public purpose.

(f) (i) An appeal may be taken from a final decision of the municipal legislative body, to make an appropriation.

(ii) The appeal shall be filed within 30 days after the date of that decision, to the district court.

(iii) Any appeal shall be based on the record of the proceedings before the legislative body.

(iv) A decision of the municipal legislative body shall be presumed to be valid unless the appealing party shows that the decision was arbitrary, capricious, or illegal.

(g) The provisions of this Subsection (3) apply only to those appropriations made after May 6, 2002.

(h) This section [~~shall only apply~~] applies only to appropriations not otherwise approved pursuant to Title 10, Chapter 5, Uniform Fiscal Procedures Act for Utah Towns, or Title 10, Chapter 6, Uniform Fiscal Procedures Act for Utah Cities.

(4) (a) Before a municipality may dispose of a significant parcel of real property, the municipality shall:

(i) provide reasonable notice of the proposed disposition at least 14 days before the opportunity for public comment under Subsection (4)(a)(ii); and

(ii) allow an opportunity for public comment on the proposed disposition.

(b) Each municipality shall, by ordinance, define what constitutes:

114 (i) a significant parcel of real property for purposes of Subsection (4)(a); and

115 (ii) reasonable notice for purposes of Subsection (4)(a)(i).

116 (5) (a) Except as provided in Subsection (5)(d), each municipality intending to acquire
117 real property for the purpose of expanding the municipality's infrastructure or other facilities
118 used for providing services that the municipality offers or intends to offer shall provide written
119 notice, as provided in this Subsection (5), of its intent to acquire the property if:

120 (i) the property is located:

121 (A) outside the boundaries of the municipality; and

122 (B) in a county of the first or second class; and

123 (ii) the intended use of the property is contrary to:

124 (A) the anticipated use of the property under the general plan of the county in whose
125 unincorporated area or the municipality in whose boundaries the property is located; or

126 (B) the property's current zoning designation.

127 (b) Each notice under Subsection (5)(a) shall:

128 (i) indicate that the municipality intends to acquire real property;

129 (ii) identify the real property; and

130 (iii) be sent to:

131 (A) each county in whose unincorporated area and each municipality in whose
132 boundaries the property is located; and

133 (B) each affected entity.

134 (c) A notice under this Subsection (5) is a protected record as provided in Subsection
135 63-2-304(7).

136 (d) (i) The notice requirement of Subsection (5)(a) does not apply if the municipality
137 previously provided notice under Section 10-9a-203 identifying the general location within the
138 municipality or unincorporated part of the county where the property to be acquired is located.

139 (ii) If a municipality is not required to comply with the notice requirement of Subsection
140 (5)(a) because of application of Subsection (5)(d)(i), the municipality shall provide the notice
141 specified in Subsection (5)(a) as soon as practicable after its acquisition of the real property.

Section 2. Section **10-9a-508** is amended to read:

10-9a-508. Exactions.

(1) A municipality may impose an exaction or exactions on development proposed in a land use application if:

~~[(+)]~~ (a) an essential link exists between a legitimate governmental interest and each exaction; and

~~[(2)]~~ (b) each exaction is roughly proportionate, both in nature and extent, to the impact of the proposed development.

(2) (a) If a municipality plans to dispose of surplus real property that was acquired under this section and has been owned by the municipality for less than five years, the municipality shall first offer to reconvey the property, without receiving additional consideration, to the person who granted the property to the municipality.

(b) A person to whom a municipality offers to reconvey property under Subsection (2)(a) has 90 days to accept or reject the municipality's offer.

(c) If a person to whom a municipality offers to reconvey property declines the offer, the municipality may offer the property for sale.

(d) Subsection (2)(a) does not apply to the disposal of property acquired by exaction by a community development or urban renewal agency.

Section 3. Section **17-27a-507** is amended to read:

17-27a-507. Exactions.

(1) A county may impose an exaction or exactions on development proposed in a land use application provided that:

~~[(+)]~~ (a) an essential link exists between a legitimate governmental interest and each exaction; and

~~[(2)]~~ (b) each exaction is roughly proportionate, both in nature and extent, to the impact of the proposed development.

(2) (a) If a county plans to dispose of surplus real property under Section 17-50-312 that was acquired under this section and has been owned by the county for less than five years,

the county shall first offer to reconvey the property, without receiving additional consideration, to the person who granted the property to the county.

(b) A person to whom a county offers to reconvey property under Subsection (2)(a) has 90 days to accept or reject the county's offer.

(c) If a person to whom a county offers to reconvey property declines the offer, the county may offer the property for sale.

(d) Subsection (2)(a) does not apply to the disposal of property acquired by exaction by a community development or urban renewal agency.

Section 4. Section **17-50-312** is amended to read:

17-50-312. Acquisition, management, and disposal of property.

(1) Subject to Subsection (4), a county may purchase, receive, hold, sell, lease, convey, or otherwise acquire and dispose of any real or personal property or any interest in such property ~~[that it determines to be]~~ if the action is in the public interest and complies with other law.

(2) Any property interest acquired by the county shall be held in the name of the county unless specifically otherwise provided by law.

(3) The county legislative body shall provide by ordinance, resolution, rule, or regulation for the manner in which property shall be acquired, managed, and disposed of.

(4) (a) Before a county may dispose of a significant parcel of real property, the county shall:

(i) provide reasonable notice of the proposed disposition at least 14 days before the opportunity for public comment under Subsection (4)(a)(ii); and

(ii) allow an opportunity for public comment on the proposed disposition.

(b) Each county shall, by ordinance, define what constitutes:

(i) a significant parcel of real property for purposes of Subsection (4)(a); and

(ii) reasonable notice for purposes of Subsection (4)(a)(i).